FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/154825

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Marinette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 20, 2014, by telephone. This Judge takes judicial notice of the Department's notices issued to the petitioner's household on January 28, June 6, July 8, September 9, and October 7, 2013.

The issue for determination is whether the petitioner was overpaid FS for the January 3 – November 30, 2013 period.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sandra Waugus, fraud investigator
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Marinette County.

2. The petitioner received FS as a household of four persons (self, partner, children) from at least November, 2012, through November 2013.

3. On January 8, 2014, Notification *of FS Overissuance* letters and worksheets were sent to the petitioner, advising that she had been overpaid (1) $2,260 in FS for the 1/4/13 – 6/30/13 period (claim #[redacted]), due to client error, and (2) $1,365 in FS for the 7/1/13 – 11/30/13 period (claim #[redacted]), due to agency error. Exhibits 9, 17. Subsequently, the agency reduced the second claim down to $1,362. The petitioner appealed.

4. The petitioner's partner began receiving Unemployment Compensation (UC) from Michigan on December 11, 2012. This income made the household eligible for a much smaller FS allotment than the allotments that were issued from January through November 2013. See Exhibit 14, worksheet.

5. The petitioner performed a periodic telephone review with the agency on December 10, 2012, and reported no income for her partner at that time (which was correct, until the next day). Verification requests were mailed to the petitioner on December 11, 2012, and December 27, 2012. No report or verification of the UC was received. The petitioner returned her review "signature page," which attests that the information given at the time of signing is correct, on January 4, 2013.

6. The Department issued notices to the household that did *not* show the UC income, and reminded of the 10-day income change reporting requirement, on January 18, January 28, and June 6, 2013.

7. The petitioner timely filed a Six Month Report Form with the Department in June 2013. On that Form, she correctly reported that her household was receiving the UC income. A Department worker then incorrectly failed to include that income in the calculation of the FS going forward. This resulted in the overpayment for the July 1 through November 30, 2013 period.

8. The Department issued notices to the household that did *not* show the UC income, on July 8, September 9, and October 7, 2013.

9. The petitioner called the Department's change reporting center on October 21, 2013, and stated that she did not believe that her November 2013 allotment had been correctly calculated, as no UC was included. This prompted the agency to review the petitioner's case, and led to the overpayment determinations.

10. The petitioner's household was overpaid FS of $2,260 from January 4 through June 30, 2013, and $1,362 from July 1 through November 30, 2013.

DISCUSSION

I. FS OVERPAYMENT RECOVERY AUTHORITY.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

> **273.18 Claims against households**.
> (a) *General*. (1) A recipient claim is an amount owed because of:
> (i) ***Benefits that are overpaid*** or
> (ii) Benefits that are trafficked. …
>
> (3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections …
> (4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

…

(b) *Types of claims*. There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) Calculating the claim amount – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment …

(e) Initiating collection actions and managing claims.

(1) *Applicability*. State ***agencies must begin collection action on all claims*** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm . The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year limit, however, for how far back in time the agency may go for the portion of the overpayment that was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 1/4/13 – 11/30/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. Rather, the petitioner testified to her belief that she had provided all requested information to the agency in a timely fashion.

The agency agrees that the petitioner correctly reported income in June 2013, which would have affected benefits from July 2013 forward. However, because the July through November 2013 period is within one-year of the overpayment "discovery," the agency is correctly proceeding with recovery. The federal rule allows recovery going back for one year, even if it is the agency's fault.

The petitioner also unnecessarily opined that she believed that agency worker Hart (#XM066) deliberately deleted the UC income in June, to botch up the petitioner's case. The petitioner's opinion is incorrect. The worker number for the Department worker who deleted the UC in June 2013 is #XMA106, per the Department's Case Comments computer record.

The overpayment for the January through June 2013 period, however, *is* the petitioner's fault. She should have reported the UC income to the agency within 10 days of its commencement. She did not do so. She vaguely mentioned that she thought she had reported the UC prior to June, but offered nothing to corroborate her self-serving testimony. The Department issued notices to her that did *not* show the UC income, and reminded her of the 10-day income change reporting requirement, on January 18, January 28, and June 6, 2013. Apparently, none of these notices prompted the petitioner to contact the agency and

question why UC was not listed. Thus, I conclude that the agency correctly determined that the household was overpaid from January through June, 2013, due to client's failure to report the UC.

CONCLUSIONS OF LAW

1. The petitioner was overpaid $2,260 in FS for the 1/4/13 – 6/30/13 period, due to client error.
2. The petitioner was overpaid $1,362 in FS for the 7/1/13 – 11/30/13 period, due to Departmental error.
3. The county agency is correctly pursuing recovery of the overpayments, pursuant to federal law.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of March, 2014

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\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 26, 2014.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability